



**Response to Comment(s)
On Rule in Development**

Rule number: **10 CSR 10-4.070**

Rule Title: **Restriction of Emission of Odors**

Type of rulemaking: **Amendment**

Response to Comments from the Office of the Attorney General

Comment: You are currently considering amendments to the odor rules as they apply to Class IA Confined Animal Feeding Operations (CAFOs). Your odor rules have been a frequent litigation target. While this office supports the amendments now proposed, we offer these additional comments with a view of moving towards a better overall system for addressing odor problems in this state. In our view, the current rules simply do not go far enough to protect the state's air resources, guard the health of our citizens, and prevent nuisances that can make living conditions near odor sources utterly unbearable. The Attorney General therefore encourages the Commission to establish a forum for a wider discussion of how well or poorly the current odor control rules are working.

The State's system of odor management can be made more effective, fair and enforceable by:

1. Establishing a more protective odor tolerance threshold than 7:1;
2. Assuming a firm violated the standard with some pre-established frequency, it would be required to do a comprehensive odor source identification and analysis and submit same to DNR.
3. Once the specific odor sources were identified—the offending company would then be required to submit an analysis of reasonable treatment alternatives in accordance with an established technical and regulatory standard (such as Reasonably Available Control Technology or Best Available Control Technology, etc).
4. If there were treatment technologies or process changes which met the chosen standard, the company would be required to install whatever device or process change as indicated pursuant to a reasonable schedule. Of course, entities would have the right to appeal any determinations by the Department to this commission and the courts as any final agency decisions.

The above process would essentially operate separately from the current enforcement standards. That is, no penalties or Notices of Violations (NOV's) would be implicated by the violation of this lower threshold - only the obligation to evaluate and implement solutions would be triggered.

We believe the Work Group process instituted by the Commission in 1999 to establish the CAFO odor rule was beneficial and we would volunteer to participate in a similar effort to implement odor rule improvements. Of course, industrial, agricultural and public advocacy groups should play a role in this process and your staff should

coordinate and provide support to the group's efforts. The Work Group should also address any other unworkable or impractical features of the existing rules.

Of course, Class 1A agricultural facilities may well need to be treated somewhat differently than industrial sources, (as do the existing rules) and urban and rural areas may merit differing thresholds and standards. We seek these changes in accordance with our Good Neighbor Policy-that large farm operations should not diminish their neighbors quality of life and that farm lands should be improved from generation to generation.

There have been wholesale advances in odor control technologies in recent years...lets put these available protections in place in prompt but orderly fashion without waiting until the situation merits enforcement.

We would appreciate the opportunity to assist you and your staff in this important endeavor and would look forward to the opportunity to serve on or with the Work Group.

Response: The last significant change to the odor regulation was promulgated in 1998 and became effective in 1999. This change brought Class IA CAFOs under the odor rules. The rule was developed in a workgroup process. The workgroup was composed of representatives from the Department of Natural Resources and other state agencies, citizen and environmental groups and animal agriculture commodity groups. In the years since the rule took effect, a great deal of additional study has ensued by Missouri and others states and universities. The department believes it is appropriate at this time to review the rule in light of the vast body of knowledge that has accrued in the last seven years. However, the department feels that this review can be conducted in parallel with the current rulemaking. Therefore, in response to the comment, the department will proceed with the current rulemaking as is while such a review is undertaken.

Response to Comments from Washington University in St. Louis, School of Law, Interdisciplinary Environmental Clinic

Comment: On behalf of the Citizens Legal Environmental Action Network (CLEAN), the Interdisciplinary Environmental Clinic at Washington University in St. Louis submits the following comments regarding the proposed changes to 10 CSR 10-2.070, 10 CSR 10-3.090, 10 CSR 10-4.070, and 10 CSR 10-5.160 (collectively "the odor regulations").

CLEAN is an organization of rural Missourians who live near hog concentrated animal feeding operations operated by Premium Standard Farms and ContiGroup (collectively PSF) in northern Missouri. Citizens living near the PSF facilities, as well as other CAFOs throughout the state, have become very frustrated with the offensive odors and air emissions they are forced to live with on an ongoing basis. Even more discouraging is the reluctance of the Department of Natural Resources (DNR) to investigate and enforce existing regulations when complaints are filed. The recent jury verdict in Jackson County Circuit Court, awarding six of PSF's neighbor a total of \$4.5 million in damages, underscores how offensive PSF's odors are to ordinary Missourians.

The screening standard should not be weakened. One of the proposed rule changes involves altering the screening standard from a dilution ratio of 5.4:1 to a ratio of 7:1. Although DNR has already been using the screening standard of 7:1, the proposed

regulatory change would, as DNR noted in a recent Missouri Air Conservation Commission meeting, formally authorize a decrease or relaxation in stringency. This change seems inappropriate when odor problems continue to threaten the health and quality of life of rural Missourians.

Additional changes are necessary. In order to address more effectively these ongoing problems with odors, particularly from CAFOs, CLEAN requests that the Air Conservation Commission adopt the following additional changes to the odor regulations.

1. Remove the overly burdensome requirement for additional, outside testing to determine an odor violation related to CAFOs;
2. Extend state-wide and to the CAFOs context the approach currently used in the St. Louis area regulation to protect residential and other sensitive areas affected by offensive odors; and
3. Require entities that generate offensive odors to do more to prevent such odors from occurring.

In conclusion, because of the significant odor problems that continue to affect Missourians, CLEAN urges the Air Conservation Commission to amend the odor regulations to accomplish the three changes described above.

Response: The last significant change to the odor regulation was promulgated in 1998 and became effective in 1999. This change brought Class IA CAFOs under the odor rules. The rule was developed in a workgroup process. The workgroup was composed of representatives from the Department of Natural Resources and other state agencies, citizen and environmental groups and animal agriculture commodity groups. In the years since the rule took effect, a great deal of additional study has ensued by Missouri and others states and universities. The department believes it is appropriate at this time to review the rule in light of the vast body of knowledge that has accrued in the last seven years. However, the department feels that this review can be conducted in parallel with the current rulemaking. Therefore, in response to the comment, the department will proceed with the current rulemaking as is while such a review is undertaken.